

PHILIP MORRIS COMPANIES INC.


INTER-OFFICE CORRESPONDENCE

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To: Corporate Management Committee

Date: March 20, 1995

From: Murray H. Bring 

Subject: WADLEIGH DECISION

On Friday afternoon, the Seventh Circuit Court of Appeals issued its decision in the Wadleigh case. This is an important and favorable development in connection with the Castano case in New Orleans.

In Wadleigh, the District Court followed a path quite similar to the one which Judge Jones adopted in Castano. Wadleigh involved a purported class action on behalf of approximately 10,000 hemophiliacs who have been infected with the HIV virus as a result of blood transfusions using blood furnished by four commercial companies that are the defendants in this case. The claim is that the companies were negligent in screening for the HIV virus. There are approximately 300 individual cases pending in various courts throughout the country. Thirteen trials on this issue have taken place, and the industry has won all but one.

The District Court Judge decided to certify a class on the issue of negligence, but refused to certify a class for all purposes, thereby requiring each of the individual class members to go through a separate trial in the event that the class jury finds in plaintiffs' favor on the issue of negligence.

The Seventh Circuit issued an extraordinary Writ of Mandamus, and in the opinion delivered last Friday, which was written by Chief Judge Posner, the Court reversed the District Judge and ordered that he decertify the class. The opinion is extremely well written, and embraces most of the arguments which we made in New Orleans in urging Judge Jones not to certify a class for any purpose. The Seventh Circuit's decision was 2 to 1, and there was a dissenting opinion. However, even the dissenter indicated that she had doubts about whether the class trial proposed by the District Court will succeed. Nevertheless, she thought that the Court should not have reversed the District Court because she did not think the defendants had satisfied the heavy burden for issuance of a Writ of Mandamus. The plaintiffs have indicated that they will seek a rehearing by the entire Seventh Circuit, but I doubt that such a rehearing will be granted, or if it is, that a majority of the Court will disagree with Judge Posner, who is highly respected.

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This is a significant decision and should assist us in our efforts to persuade the Fifth Circuit to reverse Judge Jones. Although a decision by the Seventh Circuit is not binding on the Fifth Circuit, it will obviously carry weight, and the analysis of Judge Posner is quite persuasive. He based his decision upon the following principal points:

1. That it is unfair to subject the defendants to the exposure of possible liability to 10,000 class members through a trial by six jurors on the issue of negligence. This is particularly so in view of the fact that defendants have been successful in all but one of the individual trials which they have defended. Posner pointed out that an adverse verdict by a single jury on the issue of negligence could force the defendants into an unreasonable settlement, simply to avoid the potential liability that exposure to a class of 10,000 members would involve. This reasoning would, of course, apply even more forcefully to our situation, in view of the enormous size of the class involved in Castano, and in view of the fact that the industry has never lost a smoking and health case.

2. That it is inappropriate for a single jury sitting in Illinois to determine whether the defendants have been negligent, since members of the class are located in all 50 states, and each state has a different standard for determining negligence. The Court concluded that this would be an impossible task. We made the identical argument to Judge Jones.

3. That having a class jury determine negligence, and subsequently requiring different juries throughout the country to determine whether damages should be awarded to individual class members, would deprive the defendants of their Seventh Amendment right to have a single jury determine the issue of liability. The Court pointed out that the individual juries would need to examine much of the same evidence which the class jury had considered because of the doctrine of comparative fault. This is another one of the arguments that we made in our briefs to Judge Jones.

All in all, this is a highly favorable development, and is undoubtedly the reason for the jump in our share price this morning. I am attaching a copy of the Court's opinion.

Attachment

cc: J. Cullman 3rd
C. Goldsmith
H. Maxwell
R. Millhiser
W. Murray
G. Weissman

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